

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

HUDSON SAVINGS BANK,)	
Plaintiff)	CIVIL ACTION NO. <u>05-11604-GAO</u>
v.)	(Formerly Middlesex County Superior
)	Court Civil Action No. <u>05-01231-G</u>)
GEORGE C. AUSTIN, III, As Executor of the)	
Estate of George Clifford Austin, Jr., a/k/a)	
G. Clifford Austin, II,)	
)	
GEORGE C. AUSTIN, III, As Heir of George)	
Clifford Austin, Jr., a/k/a G. Clifford Austin, II))	
)	
UNITED STATES OF AMERICA, and)	
)	
MASSACHUSETTS DEPARTMENT OF)	
REVENUE,)	
Defendants)	
)	

COMMONWEALTH OF MASSACHUSETTS' MOTION TO DISMISS ENTIRE CASE

The Commonwealth of Massachusetts Commissioner of Revenue (“Commonwealth”) moves the Court to dismiss this action in its entirety on the following grounds: (1) the Eleventh Amendment to the United States Constitution bars this action against the Commonwealth in this Court and (2) the Commonwealth is an indispensable party to this case. See Cape Ann Savings Bank v. Walter Johnson, U.S. District Court C.A. Nos. 02-10032-GAO and 02-10036-GAO (August 12, 2002) and First Federal Savings Bank of America v. John P. Ward, U.S. District Court C.A. No. 03-10168-GAO (October 7, 2003) and GMAC Mortgage Corporation v. Jeffrey L. Bayko, Sr., U.S. District Court C.A. No. 04-12448-GAO (March 24, 2005). (For further discussion see attached Memorandum In Support).

Respectfully submitted,
ALAN L. LEBOVIDGE
COMMISSIONER OF REVENUE
By his attorneys
THOMAS F. REILLY
MASSACHUSETTS ATTORNEY GENERAL
/s/ Eileen Ryan McAuliffe

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Dated: August 9, 2005
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